IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 21982 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JITESHKUMAR RAVJIBHAI PATEL - Petitioner(s)
Versus
THE STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR PREMAL R JOSHI for Petitioner(s) : 1,
MR HEMANG H.PARIKH AGP for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 1, 3,
MR AD OZA for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA

Date : 22/11/2007

ORAL JUDGMENT

1. RULE. The petition is taken up for final hearing and disposal today considering the scope of the controversy. The learned advocates appearing for the respective respondents are directed to waive service.

2. This petition has been filed primarily seeking a direction to the respondents to change the date of birth of the petitioner in School Leaving Certificate which shows the date of birth as 31.08.1987, instead of the correct date, namely, 05.09.1987.

3. The School Leaving Certificate issued to the petitioner on 22.05.2006 by respondent No.3 School shows the date of birth as 31st August, 1987. The case of the petitioner is that as per the certificate of birth (Annexure-A) recorded under the Birth and Death Registration Act, 1969 the correct birth date is 05.09.1987. The petitioner moved the Metropolitan Magistrate, Ahmedabad with Criminal Misc. Application

No.541 of 2007. The said application came to be rejected vide order dated 10.08.2007 whereunder after referring to the provisions of Section 13(3) of the Birth and Death Registration Act, 1969, the Court has come to the conclusion that the Court has no power / jurisdiction to change the date of birth in the School Leaving Certificate.

4. Upon Notice having been issued, the respondent No.2 has tendered affidavit-in-reply dated 24th September, 2007 whereunder in paragraph No.5 reference has been made to provisions of Regulation 12-A(6) of the Gujarat Secondary Education Regulations, 1974 in the following terms:

> *"5. I say and submit that the petitioner is having alternative efficacious remedy to approach the learned Magistrate under Clause 6 of Regulation 12-A of the Gujarat Secondary Education Regulation 1974 (hereinafter referred to as "the Regulations") and to obtain necessary certificate as contemplated in the said Regulation. Therefore also, the present petition is required to be rejected as the petitioner has he said alternative remedy".*

5. Having heard the learned advocates for the parties it is apparent that the petitioner did not prefer a proper application before the learned Magistrate and the learned Magistrate has also proceeded under the provisions of a different statute without realising the nature of the application. In the circumstances, without recording any opinion on merits of the claim of the petitioner, the order dated 10.08.2007 made by the Court of Metropolitan Magistrate is quashed and set aside with liberty to the petitioner to move an appropriate application in light of the statutory regulation of the Gujarat Secondary Education Regulations dealing with change in the date of birth after leaving the school. The petitioner shall file such an application with a period of fortnight from today.

6. The petition is allowed accordingly in the aforesaid terms. Rule made absolute. There shall be no order as to costs.

(D.A.MEHTA, J.)

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